

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Solid Waste Buffer Zones
(LAC 33:VII.508, 709, 717, and 719) (SW049)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.508, 709, 717, and 719 (Log #SW049).

The regulations covering buffer zone requirements for solid waste non-processing transfer stations and solid waste processing and disposal facilities are being amended to clarify who must provide permission for a waiver of buffer zone requirements. In April 2008, Rule SW046 was promulgated in an attempt to clarify the applicability of a condition requiring adjoining landowners to sign an affidavit waiving the subject buffer zone requirements for various solid waste management facilities. However, the wording could be improperly interpreted to suggest that all landowners were required to sign for the reduction in buffer zone, including owners of land at which the regulatory buffer zone was met. This rule clarifies this language. The basis and rationale for this rule are to protect the rights of all landowners having an ownership interest in property where a proposed facility will not comply with regulatory buffer standards. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on March 31, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW049. Such comments must be received no later than April 7, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to chris.ratcliff@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW049. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste Regulations

Chapter 5. Solid Waste Management System

Subchapter A. General Standards for Nonpermitted Facilities

§508. Standards Governing Non-Processing Transfer Stations for Solid Waste

A. – A.4. ...

B. New facilities in which construction has commenced after June 20, 2007, shall comply with a buffer zone requirement of not less than 200 feet between the facility and the property line. Facilities transferring only nonputrescible waste shall comply with a buffer zone requirement of not less than 50 feet between the facility and the property line. A reduction in the buffer zone requirement shall be allowed only with ~~the~~ permission, in the form of a notarized affidavit, ~~offrom all adjoining landowners~~ having an ownership interest in property located less than 200 feet (or 50 feet, if applicable) from the facility. The facility's owner or operator shall enter a A-copy of the notarized affidavit(s) ~~waiving the 200-foot or 50-foot buffer zone requirement shall be entered~~ in the mortgage and conveyance records of the parish or parishes in which the ~~adjoining~~ landowners' properties are located. The affidavit(s) shall be maintained with the records of the facility. No storage of solid waste shall occur within a facility's buffer zone.

C. – M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), amended LR 33:2142 (October 2007), LR 34:613 (April 2008), LR 35:**.

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§709. Standards Governing Type I and II Solid Waste Disposal Facilities

A. – B.2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with ~~the~~ permission, in the form of a notarized affidavit, ~~offrom all adjoining landowners~~ having an ownership interest in property located less than 200 feet from the facility. The facility's owner or operator shall enter a A-copy of the notarized affidavit(s) ~~waiving the buffer zone requirement shall be entered~~ in the mortgage and conveyance records of the parish or parishes in which the ~~for the adjoining~~ landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of landfills that have been closed in accordance with these regulations and for existing facilities.

B.3.b. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental

Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1045 (June 2007), LR 34:613 (April 2008), LR 35:**.

Subchapter B. Solid Waste Processors

§717. Standards Governing All Type I-A and II-A Solid Waste Processors

A. – B.2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, ~~off from all adjoining landowners~~ having an ownership interest in property located less than 200 feet from the facility. The facility's owner or operator shall enter a A-copy of the notarized affidavit(s) ~~waiving the buffer zone requirement shall be entered in the mortgage and conveyance records of the parish or parishes in which the for the adjoining landowners' properties are located.~~ Buffer zone requirements may be waived or modified by the administrative authority for areas of processing facilities that have been closed in accordance with these regulations and for existing facilities.

B.3.b. – I.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007), LR 34:613 (April 2008), LR 35:**.

Subchapter C. Minor Processing and Disposal Facilities

§719. Standards Governing All Type III Processing and Disposal Facilities

A. – B.2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, ~~off from all adjoining landowners~~ having an ownership interest in property located less than 50 feet from the facility. The facility's owner or operator shall enter a A-copy of the notarized affidavit(s) ~~waiving the buffer zone requirement shall be entered in the mortgage and conveyance records of the parish or parishes in which the for the adjoining landowners' properties are located.~~ Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

B.3.b. – E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: _SW049_

Person

Preparing

Statement:

Robert Thomas

Dept.:

Environmental Quality

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225-219-3056

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Return

Address:

P.O. Box 4313
Baton Rouge, LA 70821

Rule

Title:

Solid Waste Buffer Zones
(LAC 33:VII.508, 709, 717 and 719)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no costs or savings to the state or local governmental units as a result of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no increase or decrease in revenues of state or local governmental units as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no impact on receipts or income resulting from this proposed rule. There will be no cost and/or economic benefit realized by affected persons or nongovernmental groups. Buffer zones are currently required and have been historically required by the regulations. This amendment clarifies language in the rule promulgated in April 2008, Rule Log #SW046, which might be misinterpreted to suggest that all landowners were required to sign an affidavit to waive a reduction in buffer zone requirements, including those landowners where the regulatory buffer zone was met. The basis for this rule is to protect the rights of all landowners having an ownership interest in property where a proposed facility will not comply with regulatory buffer standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed rule is amending buffer zone requirements for solid waste non-processing transfer stations and solid waste processing and disposal facilities. The amendments are to clarify who must provide permission for a waiver of buffer zone requirements.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

In April 2008, SW046 was promulgated in an attempt to clarify the applicability of a condition requiring adjoining landowners to sign an affidavit waiving the subject buffer zone requirements for various solid waste management facilities. However, the wording could be improperly interpreted to suggest that ALL landowners were required to sign for the reduction in buffer zone, including those landowners where the regulatory buffer zone was met. This rule clarifies this language. The basis and rationale for this rule are to protect the rights of all landowners having an ownership interest in property where a proposed facility will not comply with regulatory buffer standards.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

There will be no increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 08-09	FY 09-10	FY 10-11
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There will be no costs or savings to the state as a result of the proposed rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Additional funding will not be required in order to implement this proposed rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no costs or savings to local government as a result of this proposed rule.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no increase or decrease in revenues as a result of this proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There will be no cost and/or economic benefit realized by affected persons or nongovernmental groups. Buffer zones are currently required and have been historically required by the regulations. This amendment clarifies language in the rule promulgated in April 2008, Rule Log #SW046, which might be misinterpreted to suggest that all landowners were required to sign an affidavit to waive a reduction in buffer zone requirements, including those landowners where the regulatory buffer zone was met. The basis for this rule is to protect the rights of all landowners having an ownership interest in property where a proposed facility will not comply with regulatory buffer standards.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts or income resulting from this proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment as a result of this proposed rule.